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ABSTRACT

One of a series of secondary level teaching units presenting case studies with pro and con analyses of particular legal problems, the document presents a student's lesson plan, a teacher's lesson plan, and a lawyer's lesson plan for examing legal issues concerned with immigration and deportation. The unit exposes students to the quota system (a quantitative restriction on immigration to the United States) and to the rules of treaties entered into by the United States with other countries. Although similar in content, student and teacher lesson plans are presented separately to facilitate independent or small group work among students and to provide additional background information for teachers. Prior to a lawyer's visit to the classroom, students complete an opinion sheet as a means of exploring their attitudes toward immigration, and read an article entitled "A Nation for Immigrants?" An activity and glossary are followed by case study analyses and question answering. Due process rights for aliens are outlined. Teacher materials include a reading on court systems and a simplified view of the federal and California court structures. The lawyer's lesson plan provides further questions and discussion on the case studies, discussion concerning resolution of the dispute, and a listing of related court cases pertaining to immigration and deportation. (LH)

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GATEWAY

Deportation

A Student's Lesson Plan

Prepared by Estelle Howard
Richard Weintraub
1982

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STUDENT'S LESSON PLAN

INTRODUCTORY UNIT #1

The Opinion Sheet that appears below is to stimulate your thinking about the complicated issues involved in the area of law concerned with immigration and deportation. There are many social, economic and legal questions that arise these days in connection with illegal aliens, refugees, and others seeking asylum in the United States.

To examine your attitudes towards immigration, deportation and the role of the alien in American society, study the statements below and mark your paper with the letters that indicate the degree to which you agree or disagree with each statement.

After you have marked your paper, compare your responses to those in the small group to which you will be assigned. Discuss with your group what you believe the results of the Opinion Sheet seem to indicate about your attitudes in this area. Prepare a consensus report of your group's answers, then compare your results with the results of the rest of the class. Do you think the results are typical of your age group? The community? The nation as a whole? Are there wide differences of opinions in your class? How would you explain this?

OPINION SHEET

In front of each statement place the letters that indicate the extent to which you agree or disagree.

SA - Strongly Agree U - Uncertain D - Disagree
A - Agree SD - Strongly Disagree

___ 1. There are enough people in the United States so no foreigners should be allowed to enter the country.

___ 2. People from other countries take jobs away from Americans.

___ 3. There should be no restrictions on who can come into the U.S. from other countries.

___ 4. People who come to the United States illegally should be deported.

___ 5. All people who are here illegally at this time should be given permanent resident's status.

___ 6. Aliens corrupt the American system.

___ 7. Only educated people with a needed skill or profession should be allowed to become a permanent resident or citizen.

___ 8. American citizens have to pay higher taxes because most immigrants are poor and unskilled and have to be taken care of.

___ 9. Most of the criminals in the United States are foreigners.

___ 10. Only white Protestants should be permitted to enter the country.

___ 11. Foreigners are dirty and downgrade a neighborhood.

___ 12. Too many foreigners are communists and come here as spies.

___ 13. United States should restrict the number of refugees admitted.

___ 14. United States should have a quota system to control the number of persons admitted to this country each year.

INTRODUCTORY UNIT #2

Read the article, "A Nation for Immigrants?", which appears below. At the end of the article there are questions about immigration. Read these questions and discuss your ideas about them with the class.

"A Nation for Immigrants?"*

At the end of the Vietnam War, 130,000 refugees were admitted to the United States. Except for highly skilled professionals who found jobs easily, many of these people have had great difficulty finding work. A large number are now on welfare. In some states they have become a burden to schools which are short of funds. Did you favor or oppose the admission of these refugees as permanent residents of the United States? Do you believe there should be restrictions which limit who can enter the United States? What should those restrictions be?

During its existence as a country, the United States has approached the question of foreign immigration from a number of different perspectives. For some time, there was great support for "open", unrestricted immigration and the viewpoint that the United States should be and could be the "haven" for all people who desired to live here.

Later, however, serious reservations developed regarding this perspective. Instead some form of restricted immigration was proposed. As a result, the United States has utilized various quota systems. At first we enforced quotas on national origin. Later immigrants were admitted because of certain skills and family ties.

Since the founders of our nation once believed the country should be open to all who wished to come here, the bicentennial is an excellent time to examine our past and present policies regarding immigration. Moreover, it provides us with an occasion to reflect upon a number of important questions:

-- Have our policies regarding immigration been consistent with the ideals and principles upon which this country was founded?

-- Is there sufficient reason to care what kind and how many immigrants are admitted to the United States?

-- Is our present immigration policy the best one possible? What are the alternatives?

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* Bill of Rights Newsletter, Spring 1976, Constitutional Rights Foundation.

Early Immigration

Inscribed at the base of the Statue of Liberty in New York harbor are the words of the sonnet by Lazarus. For many decades, the Statue and its inscription served to symbolize American immigration policy.

The United States of America was viewed by American citizens and foreigners as the haven for the oppressed, the poor, the persecuted. To many people from foreign lands, it represented a place of hope and freedom where any individual had the chance to improve his or her lot in life.

With a relatively small population and ever-expanding economy, an expressed commitment to the rights of the individual, and a government guided by democratic principles, the United States had many things to offer the immigrant. In addition to its attractive features, the United States made no real attempt for many years to restrict or limit the flow of people coming into the country from foreign lands.

Taking advantage of this opportunity, between 1800 and 1920 over 30,000,000 immigrants entered the United States. Until the 1880's, most of them came from Northern Europe, but later waves of newcomers came chiefly from Southern and Eastern Europe. By the 1920's, at least one-third of the population of the United States were either foreign born or had at least one foreign parent.

However, in spite of the massive movement of people to the United States seeking freedom and opportunity, each group was not greeted with enthusiasm by some Americans. Prejudice based on differences in religion, language and customs as well as the belief that foreign labor kept wages low, made the lot of most immigrant groups very difficult. And, as each new group gained acceptance, it developed its own prejudice against other groups. On many occasions, anti-foreign feelings boiled over into riots, mob attacks on churches and loss of life.

The most unfortunate group of all were blacks, sold by other blacks as slaves in Africa. After horrible voyages they were sold again upon arrival in America, creating the most difficult continuing conflict between American ideals and behavior.

Selective Immigration

During the 1920's, United States immigration policies were reviewed and significantly changed. Open immigration was

replaced by a set of strict standards and regulations regarding entrance to the United States.

Behind these changes and the partial . . . but substantial . . . closing of the "golden door" to immigrants were a number of factors. There was concern over the admittance of undesirables, illiterates, the diseased, and criminals. Labor, with growing political power, charged that it could not tolerate the continued influx of another group of cheap immigrant labor into the United States. It was costing Americans jobs!

Moreover, the nation was faced with a series of problems associated with the rapid growth of cities and industry as well as highly unstable economic conditions. Coupled with a growing fear of revolutionary ideas that were popular in Europe and the increasing popularity of the ideas of white racial and ethnic superiority at the time, the United States seemed ready for change.

With these kinds of public pressures being brought to bear upon government officials, a number of new immigration measures were adopted. America, in effect, was to make a severe and permanent change in its immigration policy and become selective regarding who was to be admitted to the United States.

Prior to the close of the nineteenth century, Congress had already passed legislation restricting the immigration of persons who were Oriental, alcoholic, diseased, mentally unsound or criminal. Nevertheless, the most restrictive measures limiting immigration to the United States did not occur until the 1920's.

With the passage of the quota laws in 1921 and 1924, immigration each year was restricted to a specified number of people from each country outside the Western Hemishpere. The 1924 law, for example, reduced this annual number to about 164,000 immigrants. This was a substantial reduction from the 800,000 people that had entered the United States in one year immediately following World War I. This legislation ended the greatest flow of people from one area to another in the history of the world.

Reform for the Better??

In 1965, the country-by-country quota system was abolished. Instead, an overall quota of 170,000 annual immigrants from outside the Western Hemisphere was established. In deciding who was to be admitted, preference was given to (1) relatives

of United States citizens and resident aliens; (2) persons possessing special skills or who could help to fill a labor shortage in the United States; and (3) displaced persons or refugees from political, religious, and racial persecution.

In addition to imposing new regulations on immigrants from nations outside of the Western Hemisphere, the 1965 law set the first limits on the immigration of people from countries within the Western Hemisphere at 120,000. Admittance was to be determined on a "first come, first served" basis. In 1974, for example, about 72,000 immigrants entered the United States from Mexico, another 62,000 from the West Indies, and over 22,000 from South America.

Refugees

In addition to the regular quota procedures, there are also means by which refugees can be admitted to the United States whenever the need arises. In the past, 800,000 refugees from Eastern Europe were admitted after World War II. After Castro came to power in Cuba, over 600,000 refugees from that nation were admitted. While we may appear quite humanitarian, it has also been pointed out that, prior to World War II, we refused to admit refugees from Nazi Germany. More recently, individuals seeking asylum from Haiti, and from Chile after the fall of the Allende government, were refused special status entry. Critics of these acts claim the refusals were based on the desire of our government to maintain good relations with the totalitarian governments in question.

Activities

1. How do you feel about the United States immigration policy today?

   Do you feel it is consistent with the principles which serve as the basis for our democratic government and society?

2. What do you think the importance of each of the following characteristics should be to the admission of immigrants?

Characteristic

1. Race
2. Nationality
3. Skills
4. Age

5. Physical Condition
6. Employment Potential
7. Mental Condition
8. Criminal Record
9. Relationship to United States Citizens
10. Political Organization Membership
11. Beliefs
12. Degree of Wealth
13. Political/Religious Refugee

3. Which of the following individuals should be admitted as immigrants?

Place each individual in <u>one</u> of the following three categories:

(1) Likely to admit

(2) Questionable

(3) Likely <u>not</u> to admit

-- A doctor from a Middle East nation who wishes to study a medical specialty in the United States, then live here.

-- A nuclear physicist from Northern Europe who has been a member of the Communist party there.

-- A Japanese businessman who is well known for his management skills.

-- A black African leader who has been a strong supporter of socialism but who has recently been ousted from his nation.

-- A Northern European who is well educated and has served time for bank robbery in England.

-- A Southern European businessman who it is rumored has "Mafia" ties.

-- An Arab child whose mother now resides in the United States.

GLOSSARY

ALIEN - Any person who is not a U.S. citizen, whether or not that person lives here permanently

ASYLUM - Protection from arrest and extradition given especially to political refugees by a nation or by an embassy or other agency enjoying diplomatic immunity

DEPORTATION - The removal from a country of an alien whose presence is unlawful or prejudicial.

EMIGRATE - To leave a place of abode or a country for life or residence elsewhere

FOREIGNER - A person belonging to or owing allegiance to a country other than the one being considered

REFUGEE - One who flees to a foreign country or power to escape danger or persecution

RESIDENT - One who lives in a particular place

LAWYER-IN-THE-CLASSROOM UNIT

Read the case below which you will discuss and analyze with the visiting lawyer before the class period. Study the questions so that you will be prepared to talk with the lawyer about the case and ask questions relating to immigration and deportation that are of concern to you.

CASE

Relying on the advice of a former history professor that the Treaty of Guadalupe Hidalgo of 1848 between the United States and Mexico still guaranteed free access to all Mexican nationals to the United States, Rita Gonzalez, a Mexican national, entered the United States by crossing an unguarded portion of the border between the two countries. She had documents from neither the Mexican nor United States governments. Neither did she pass inspection by officials of the Immigration and Naturalization Service at the border or at any other point within the United States. Four years passed during which time Ms. Gonzalez was employed at a junior college in Los Angeles teaching Spanish and participating in many school activities. She had lived an exemplary life and was well respected by all in the community.

During this period the Immigration Service discovered that Ms. Gonzalez did not have a valid visa and had not passed inspection at the border. They have filed an order to show cause to have her deported. Upon receiving notice of the charges against her, Ms. Gonzalez asked her attorney whether she can in fact be deported under the U.S. Immigration laws, particularly in view of the treaty between the two countries. If she is deportable, Ms. Gonzalez wishes to know whether there are any possibilities of attacking the federal law on constitutional grounds.

QUESTIONS

A. Do you think a person should have the right to freely cross international borders just because two nations have a treaty which appears to guarantee free migration? Why? Why not?

B. Do you think Ms. Gonzalez committed a crime by entering this country without proper documents? Or do you think that immigration and deportation matters are civil issues?

C. If you were Ms. Gonzalez what arguments would you make to support your right to enter the United States and to remain here?

D. If you were the federal government, what arguments would you make to support your order of deportation?

E. Do you think that people who are not citizens of this country should have, or do have, the right to challenge the constitutionality of a law? Why? Why not?

F. How would you resolve the issues in Ms. Gonzalez' case? What would be your reasons for your decision?

FOLLOW-JP UNIT #1

Using the information you have gained from the lawyer's visit, analyze the two cases below and give your opinion as to how the Immigration and Naturalization Service disposed of these matters. Use the questions that follow each case as springboards to general class discussion.

CASE 1

John Lennon, a British citizen and resident, had been living and working in the United States on a temporary visa. He applied for a special visa that would allow him to become a permanent resident without his having to return to England to wait his turn on the quota list. He made this application on the basis of the fact that he was a famous entertainer and should, therefore, get preferred treatment.

This request was denied and Lennon was asked to leave the country by the Immigration and Naturalization Service. He was ordered deported because he had been convicted while living in England for possession of marijuana.

QUESTIONS

A. Do you believe John Lennon should be deported? Why? Why not? Should Yoko be awarded permanent residency? Why? Why not?

B. Would you make the same judgment if the person had not been a popular rock singer?

C. What if he were a former prime minister of a foreign country and had come to the United States seeking political refuge? What if he had been a drug dealer?

CASE 2

Suzanne Jardin, a twenty-two-year-old citizen of French Morocco, entered the United States possessing a valid immigrant visa to reside in the country permanently. She had complied with all necessary requirements to get her United States visa and had a valid French Moroccan passport. At the time she entered the United States she was inspected by immigration officials of the Immigration and Naturalization Service and was admitted. Three years passed during which time Ms. Jardin lived an exemplary life, teaching at a local junior college and taking part in many

community activities. During this period, the Immigration and Naturalization Service found out that Ms. Jardin had previously been a prostitute in her native country. She had, however, discontinued this occupation two years before coming to the United States. At no time since she entered the United States had she been engaged in prostitution. In French Morocco prostitution was entirely legal at the time Ms. Jardin was a prostitute.

Immigration officials have filed an order to show cause to have Ms. Jardin deported on grounds that she had in the past engaged in prostitution. Upon receiving notice of the charges against her, Ms. Jardin asked her attorney whether she can be deported under the United States immigration laws. If she is deportable, Ms. Jardin wishes to know whether there are any possibilities of attacking the federal law on constitutional grounds.

QUESTIONS

A. What are the major issues raised by this case?

B. Who has an interest in the issues? Which of these interests are or should be protected by law?

C. If you were Ms. Jardin what arguments would you make to support your right to enter the United States and your right not to be deported?

D. If you were the federal government, what arguments would you make for the right to exclude and/or deport Ms. Jardin?

FOLLOW-UP UNIT #2

DUE PROCESS RIGHTS FOR ALIENS*

Historically the United States has been a haven for oppressed and persecuted people; for the poor seeking to better their lives; for those who wanted to live in a country where opportunities for expression of individual philosophy and attitudes were great. For the first 100 years of its identity as a nation, the U.S. had no restrictions on immigration. From 1875 on laws were passed to restrict the numbers of persons entering this country and to bar certain types of persons, such as criminals, prostitutes, beggars and anarchists. Although the United States still opens its ports to people from all over the world, there are certain procedures aliens must go through to meet the requirements for entry, to be allowed to work here, and to become citizens. Over the past years many persons who have not been able to gain admission legally have come into the country secretly. These people are illegal aliens. Though an "illegal" may have lived in the country for many years, been employed, married and had children, he/she is still in the United States illegally and is deportable, and is "wanted" by the Immigration and Naturalization Service.

There are many social and economic problems relating to the "illegal" that have not been solved by the government, but one of great importance is the question of whether the illegal alien has the same rights as a citizen accused of a crime.

You have had two lessons on the question of immigration and deportation, and have learned something about the immigration laws. Using this knowledge as a basis for your reasoning, study the following statements and discuss with the class your reasons for agreeing or disagreeing with them. Consider whether or not the attitudes you expressed on the Opinion Sheet in the Introductory Lesson have changed, stayed the same, and/or been reenforced.

1. The Immigration Service should not conduct mass arrests unless authorization for such arrests are first obtained from a judge.

2. The Immigration Service should have the right to detain, interrogate, and/or arrest any person it believes to be an alien.

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* Adapted from "Report on the Deportation and Removal of Aliens", Los Angeles County Bar Association, 1976.

3. There should be a national uniform standard for arrest that all Immigration Service officials would be required to follow.

4. The Immigration Service should concentrate its activities to enforcing the immigration rules at the borders. It should not use roadblocks in the interior of the country to stop and question people.

5. Any suspected alien should be advised that he/she has a right to remain silent, that any statement he/she makes may be used against him/her, and that he/she has a right to the presence or an attorney, either retained by him/her or appointed by the court, as other people arrested on suspicion are advised.

6. For an officer to make an arrest for the violation of an immigration law there should be probable cause for such an arrest not just a reasonable suspicion.

7. An alien's registration receipt card, known as a "green card", should not be taken away without a hearing or other due process of law. It should be first determined judicially that the person is not entitled to possession of the green card.

8. Interpreters should be made available to a suspected alien upon arrival at detention centers after arrests and at all critical stages of the proceedings thereafter. Also, the alien should have the right to have all matters pertaining to arrest and detention explained to him/her in his/her own language.

9. INS officers should be trained so that they know and understand how to deal with people from other countries in a courteous manner and be sensitive to the feelings of insecurity strangers in a new country have.

10. It should be a crime to knowingly hire an alien who is in the United States without proper authorization to work.

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A Teacher's Lesson Plan

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TEACHER'S LESSON PLAN

To prepare the students for the Lawyer-in-the-Classroom Unit on the complicated issues of immigration and deportation, have the students explore their attitudes and notions about the social issues and legal policies involved.

The teacher has the option of using Introductory Unit #1 or Unit #2 to establish attitudes and prejudices concerning immigration.

Copy and distribute the material from the Introductory Unit in the Student's Lesson Plan you select.

INTRODUCTORY UNIT #1

IMMIGRATION--WHAT IS YOUR OPINION?

To establish what individual attitudes are towards immigration, deportation, and the role of the alien in American society, have the students study the following statements and mark their papers with the letters that indicate the extent to which they agree or disagree.

Divide the class into small groups of four to six. Each group will compare their answers and discuss what the results tend to show about their group. Each group shall then prepare a consensus report of their attitudes and compare it with the position of the rest of the class. Discuss with the class the general attitudes expressed. Ask the students to consider whether the results are typical of their age group, the community, the nation as a whole. If there are wide differences of opinion held within the class, ask the students how they can explain that fact.

OPINION SHEET

In front of each statement place the letters that indicate the extent to which you agree or disagree.

SA - Strongly Agree U - Uncertain D - Disagree
A - Agree SD - Strongly Disagree

___ 1. There are enough people in the United States so no foreigners should be allowed to enter the country.

___ 2. People from other countries take jobs away from Americans.

___ 3. There should be no restrictions on who can come into the U.S. from other countries.

___ 4. People who come to the United States illegally should be deported.

___ 5. All people who are here illegally at this time should be given permanent resident's status.

___ 6. Aliens corrupt the American system.

___ 7. Only educated people with a needed skill or profession should be allowed to become a permanent resident or citizen.

___ 8. American citizens have to pay higher taxes because most immigrants are poor and unskilled and have to be taken care of.

___ 9. Most of the criminals in the United States are foreigners.

___ 10. Only white Protestants should be permitted to enter the country.

___ 11. Foreigners are dirty and downgrade a neighborhood.

___ 12. Too many foreigners are communists and come here as spies.

___ 13. United States should restrict the number of refugees admitted.

___ 14. United States should have a quota system to control the number of persons admitted to this country each year.

INTRODUCTORY UNIT #2

Copy the material from Introductory Unit #2 of the Student's Lesson Plan. After the students have read the article, "A Nation for Immigrants", discuss the questions on Page 6.

"A Nation for Immigrants?"*

At the end of the Vietnam War, 130,000 refugees were admitted to the United States. Except for highly skilled professionals who found jobs easily, many of these people have had great difficulty finding work. A large number are now on welfare. In some states they have become a burden to schools which are short of funds. Did you favor or oppose the admission of these refugees as permanent residents of the United States? Do you believe there should be restrictions which limit who can enter the United States? What should those restrictions be?

During its existence as a country, the United States has approached the question of foreign immigration from a number of different perspectives. For some time, there was great support for "open", unrestricted immigration and the viewpoint that the United States should be and could be the "haven" for all people who desired to live here.

Later, however, serious reservations developed regarding this perspective. Instead some form of restricted immigration was proposed. As a result, the United States has utilized various quota systems. At first we enforced quotas on national origin. Later immigrants were admitted because of certain skills and family ties.

Since the founders of our nation once believed the country should be open to all who wished to come here, the bicentennial is an excellent time to examine our past and present policies regarding immigration. Moreover, it provides us with an occasion to reflect upon a number of important questions:

-- Have our policies regarding immigration been consistent with the ideals and principles upon which this country was founded?

-- Is there sufficient reason to care what kind and how many immigrants are admitted to the United States?

-- Is our present immigration policy the best one possible? What are the alternatives?

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Early Immigration

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With a relatively small population and ever-expanding economy, an expressed commitment to the rights of the individual, and a government guided by democratic principles, the United States had many things to offer the immigrant. In addition to its attractive features, the United States made no real attempt for many years to restrict or limit the flow of people coming into the country from foreign lands.

Taking advantage of this opportunity, between 1800 and 1920 over 30,000,000 immigrants entered the United States. Until the 1880's, most of them came from Northern Europe, but later waves of newcomers came chiefly from Southern and Eastern Europe. By the 1920's, at least one-third of the population of the United States were either foreign born or had at least <u>one</u> foreign parent.

However, in spite of the massive movement of people to the United States seeking freedom and opportunity, each group was not greeted with enthusiasm by some Americans. Prejudice based on differences in religion, language and customs as well as the belief that foreign labor kept wages low, made the lot of most immigrant groups very difficult. And, as each new group gained acceptance, it developed its own prejudice against other groups. On many occasions, anti-foreign feelings boiled over into riots, mob attacks on churches and loss of life.

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Selective Immigration

During the 1920's, United States immigration policies were reviewed and significantly changed. Open immigration was

replaced by a set of strict standards and regulations regarding entrance to the United States.

Behind these changes and the partial . . . but substantial . . . closing of the "golden door" to immigrants were a number of factors. There was concern over the admittance of undesirables, illiterates, the diseased, and criminals. Labor, with growing political power, charged that it could not tolerate the continued influx of another group of cheap immigrant labor into the United States. It was costing Americans jobs!

Moreover, the nation was faced with a series of problems associated with the rapid growth of cities and industry as well as highly unstable economic conditions. Coupled with a growing fear of revolutionary ideas that were popular in Europe and the increasing popularity of the ideas of white racial and ethnic superiority at the time, the United States seemed ready for change.

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of United States citizens and resident aliens; (2) persons possessing special skills or who could help to fill a labor shortage in the United States; and (3) displaced persons or refugees from political, religious, and racial persecution.

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Activities

1. How do you feel about the United States immigration policy today?

   Do you feel it is consistent with the principles which serve as the basis for our democratic government and society?

2. What do you think the importance of each of the following characteristics should be to the admission of immigrants?

Characteristic

1. Race
2. Nationality
3. Skills
4. Age

5. Physical Condition
6. Employment Potential
7. Mental Condition
8. Criminal Record
9. Relationship to United States Citizens
10. Political Organization Membership
11. Beliefs
12. Degree of Wealth
13. Political/Religious Refugee

3. Which of the following individuals should be admitted as immigrants?

Place each individual in <u>one</u> of the following three categories:

(1) Likely to admit

(2) Questionable

(3) Likely <u>not</u> to admit

-- A doctor from a Middle East nation who wishes to study a medical specialty in the United States, then live here.

-- A nuclear physicist from Northern Europe who has been a member of the Communist party there.

-- A Japanese businessman who is well known for his management skills.

-- A black African leader who has been a strong supporter of socialism but who has recently been ousted from his nation.

-- A Northern European who is well educated and has served time for bank robbery in England.

-- A Southern European businessman who it is rumored has "Mafia" ties.

-- An Arab child whose mother now resides in the United States.

GLOSSARY

ALIEN - Any person who is not a U.S. citizen, whether or not that person lives here permanently

ASYLUM - Protection from arrest and extradition given especially to political refugees by a nation or by an embassy or other agency enjoying diplomatic immunity

DEPORTATION - The removal from a country of an alien whose presence is unlawful or prejudicial.

EMIGRATE - To leave a place of abode or a country for life or residence elsewhere

FOREIGNER - A person belonging to or owing allegiance to a country other than the one being considered

REFUGEE - One who flees to a foreign country or power to escape danger or persecution

RESIDENT - One who lives in a particular place

LAWYER-IN-THE-CLASSROOM UNIT

Copy and distribute the materials in the Student's Lesson Plan for the Lawyer-in-the-Classroom Unit. This includes the case to be discussed and the questions that follow. Ask the students to read the case prior to the lawyer's visit and study the questions so that they will be prepared to discuss and analyze the issues raised. If the students have any questions concerning the issues, it is advisable that such questions be written out so that they can ask the lawyer to discuss them.

CASE

Relying on the advice of a former history professor that the Treaty of Guadalupe Hidalgo of 1848 between the United States and Mexico still guaranteed free access to all Mexican nationals to the United States, Rita Gonzalez, a Mexican national, entered the United States by crossing an unguarded portion of the border between the two countries. She had documents from neither the Mexican nor United States governments. Neither did she pass inspection by officials of the Immigration and Naturalization Service at the border or at any other point within the United States. Four years passed during which time Ms. Gonzalez was employed at a junior college in Los Angeles teaching Spanish and participating in many school activities. She had lived an exemplary life and was well respected by all in the community.

During this period the Immigration Service discovered that Ms. Gonzalez did not have a valid visa and had not passed inspection at the border. They have filed an order to show cause to have her deported. Upon receiving notice of the charges against her, Ms. Gonzalez asked her attorney whether she can in fact be deported under the U.S. Immigration laws, particularly in view of the treaty between the two countries. If she is deportable, Ms. Gonzalez wishes to know whether there are any possibilities of attacking the federal law on constitutional grounds.

QUESTIONS

A. Do you think a person should have the right to freely cross international borders just because two nations have a treaty which appears to guarantee free migration? Why? Why not?

B. Do you think Ms. Gonzalez committed a crime by entering this country without proper documents? Or do you think that immigration and deportation matters are civil issues?

C. If you were Ms. Gonzalez what arguments would you make to support your right to enter the United States and to remain here?

D. If you were the federal government, what arguments would you make to support your order of deportation?

E. Do you think that people who are not citizens of this country should have, or do have, the right to challenge the constitutionality of a law? Why? Why not?

F. How would you resolve the issues in Ms. Gonzalez' case? What would be your reasons for your decision?

FOLLOW-UP UNIT

To give the students an opportunity to apply the information they have gained on immigration and deportation laws, Follow-Up Unit #1 and/or #2 can be used. Either of these will present a new set of facts for the students to analyze.

Copy and distribute the materials from the Unit to be used in the Student's Lesson Plan.

FOLLOW-UP UNIT #1

Have the students read the John Lennon case and discuss the issues involved, using the Questions as a springboard for analysis.

CASE 1

John Lennon, a British citizen and resident, had been living and working in the United States on a temporary visa. He applied for a special visa that would allow him to become a permanent resident without his having to return to England to wait his turn on the quota list. He made this application on the basis of the fact that he was a famous entertainer and should, therefore, get preferred treatment.

This request was denied and Lennon was asked to leave the country by the Immigration and Naturalization Service. He was ordered deported because he had been convicted while living in England for possession of marijuana.

QUESTIONS

A. Do you believe John Lennon should be deported? Why? Why not? Should Yoko be awarded permanent residency? Why? Why not?

B. Would you make the same judgment if the person had not been a popular rock singer?

C. What if he were a former prime minister of a foreign country and had come to the United States seeking political refuge? What if he had been a drug dealer?

Information For The Teacher

The Court of Appeals held that alien's conviction of possession of cannabis resin (marijuana) in violation of British law under which guilty knowledge was irrelevant could not furnish grounds for excluding alien under the statute making

excludable any alien convicted of violation of any law or regulation relating to the illicit possession of marijuana.

CASE 2

Suzanne Jardin, a twenty-two-year-old citizen of French Morocco, entered the United States possessing a valid immigrant visa to reside in the country permanently. She had complied with all necessary requirements to get her United States visa and had a valid French Moroccan passport. At the time she entered the United States she was inspected by immigration officials of the Immigration and Naturalization Service and was admitted. Three years passed during which time Ms. Jardin lived an exemplary life, teaching at a local junior college and taking part in many community activities. During this period, the Immigration and Naturalization Service found out that Ms. Jardin had previously been a prostitute in her native country. She had, however, discontinued this occupation two years before coming to the United States. At no time since she entered the United States had she been engaged in prostitution. In French Morocco prostitution was entirely legal at the time Ms. Jardin was a prostitute.

Immigration officials have filed an order to show cause to have Ms. Jardin deported on grounds that she had in the past engaged in prostitution. Upon receiving notice of the charges against her, Ms. Jardin asked her attorney whether she can be deported under the United States immigration laws. If she is deportable, Ms. Jardin wishes to know whether there are any possibilities of attacking the federal law on constitutional grounds.

QUESTIONS

A. What are the major issues raised by this case?

B. Who has an interest in the issues? Which of these interests are or should be protected by law?

C. If you were Ms. Jardin what arguments would you make to support your right to enter the United States and your right not to be deported?

D. If you were the federal government, what arguments would you make for the right to exclude and/or deport Ms. Jardin?

Information For The Teacher

Section 212(a)(12) of the Immigration and Nationality Act of 1952 directs the exclusion of "aliens who are prostitutes or who have engaged in prostitution. . . ." This section does not provide for a statute of limitations; consequently, an alien who was a prostitute at any time in the past will be subject to this section even though he/she may later have abandoned the occupation.

Since the Immigration and Nationality Act provides for the deportation of any person who falls within an excludable class, Ms. Jardin will be subject to deportation because she is within Section 212(a)(12).

The Board of Immigration Appeals, the highest administrative agency rendering decisions on violations of immigration law, found Ms. Jardin deportable. Citing Section 212(a)(12), the Board noted that the section did not refer to the "crime" of prostitution; "the conduct proscribed is prostitution, not the conviction of prostitution. . . ."

The fact that she had abandoned the practice two years prior to entering the United States was similarly treated by the Board which again cited the statute and reasoned that because the section did not cover the circumstances of abandonment of a prohibited occupation no mitigation was possible.

FOLLOW-UP UNIT #2

Copy and distribute the materials in Follow-Up Unit #2 of the Student's Lesson Plan. This Unit allows for an in-depth analysis of student opinion relative to constitutional rights and protections for illegal aliens. The information gathered from the discussion with the lawyer should serve as a basis for reasoning on the questions posed. Students should be asked to present arguments to support positions of agreement or disagreement with the statements presented.

DUE PROCESS RIGHTS FOR ALIENS*

Historically the United States has been a haven for oppressed and persecuted people; for the poor seeking to better their lives; for those who wanted to live in a country where opportunities for expression of individual philosophy and attitudes were great. For the first 100 years of its identity as a nation, the U.S. had no restrictions on immigration. From 1875 on laws were passed to restrict the numbers of persons entering this country and to bar certain types of persons, such as criminals, prostitutes, beggars and anarchists. Although the United States still opens its ports to people from all over the world, there are certain procedures aliens must go through to meet the requirements for entry, to be allowed to work here, and to become citizens. Over the past years many persons who have not been able to gain admission legally have come into the country secretly. These people are illegal aliens. Though an "illegal" may have lived in the country for many years, been employed, married and had children, he/she is still in the United States illegally and is deportable, and is "wanted" by the Immigration and Naturalization Service.

There are many social and economic problems relating to the "illegal" that have not been solved by the government, but one of great importance is the question of whether the illegal alien has the same rights as a citizen accused of a crime.

You have had two lessons on the question of immigration and deportation, and have learned something about the immigration laws. Using this knowledge as a basis for your reasoning, study the following statements and discuss with the class your reasons for agreeing or disagreeing with them. Consider whether or not the attitudes you expressed on the Opinion Sheet in the Introductory Lesson have changed, stayed the same, and/or been reenforced.

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* Adapted from "Report on the Deportation and Removal of Aliens", Los Angeles County Bar Association, 1976.

1. The Immigration Service should not conduct mass arrests unless authorization for such arrests are first obtained from a judge.

2. The Immigration Service should have the right to detain, interrogate, and/or arrest any person it believes to be an alien.

3. There should be a national uniform standard for arrest that all Immigration Service officials would be required to follow.

4. The Immigration Service should concentrate its activities to enforcing the immigration rules at the borders. It should not use roadblocks in the interior of the country to stop and question people.

5. Any suspected alien should be advised that he/she has a right to remain silent, that any statement he/she makes may be used against him/her, and that he/she has a right to the presence or an attorney, either retained by him/her or appointed by the court, as other people arrested on suspicion are advised.

6. For an officer to make an arrest for the violation of an immigration law there should be probable cause for such an arrest not just a reasonable suspicion.

7. An alien's registration receipt card, known as a "green card", should not be taken away without a hearing or other due process of law. It should be first determined judicially that the person is not entitled to possession of the green card.

8. Interpreters should be made available to a suspected alien upon arrival at detention centers after arrests and at all critical stages of the proceedings thereafter. Also, the alien should have the right to have all matters pertaining to arrest and detention explained to him/her in his/her own language.

9. INS officers should be trained so that they know and understand how to deal with people from other countries in a courteous manner and be sensitive to the feelings of insecurity strangers in a new country have.

10. It should be a crime to knowingly hire an alien who is in the United States without proper authorization to work.

COURT SYSTEMS

There are essentially three ways to categorize our courts. First, there are trial and appellate courts. The job of the trial courts is to find the facts in the case and apply the law to those specific facts. All cases start at the trial court level. The appellate courts focus on the law involved in the case. They do not review questions of fact, which the trial court decides. Appellate courts decide whether the trial judge erred in his interpretation of the law, and thus a case may reach an appellate court only after it has been heard in a trial court.

The second distinction is between criminal and civil courts. In a criminal case (where accused has harmed society and government, representing society, brings a case against him), the government accuses a person of violating a law for which a penalty is provided. It seeks to punish the accused by depriving him of his life, liberty, or property. In a civil case, one may also be deprived of his property (and sometimes his liberty), but for a different reason. The purpose of a criminal trial is to punish the offender; that of a civil trial (one person against another--between private citizens) is to compensate one person for a loss caused by another. Common cases where such liability may be found are automobile accidents, sale of faulty merchandise, and failure to pay rent.

Third, there are both state and federal court systems. (See Chart on Court Structures.) The federal district courts are the trial courts for all cases arising under the laws and Constitution of the United States. State courts have jurisdiction over all cases arising at common law* and equity** as well as all cases under the laws of the states as enacted by their legislatures. Most cases, both criminal and civil, are brought in the state courts. Within the state court system there may be a number of different trial and appellate courts having jurisdiction, or authority, over different types of cases and cases of different degrees of importance. For example, in California trial courts, a case in a large judicial district will be brought in either the municipal court or the superior court. The superior court handles the

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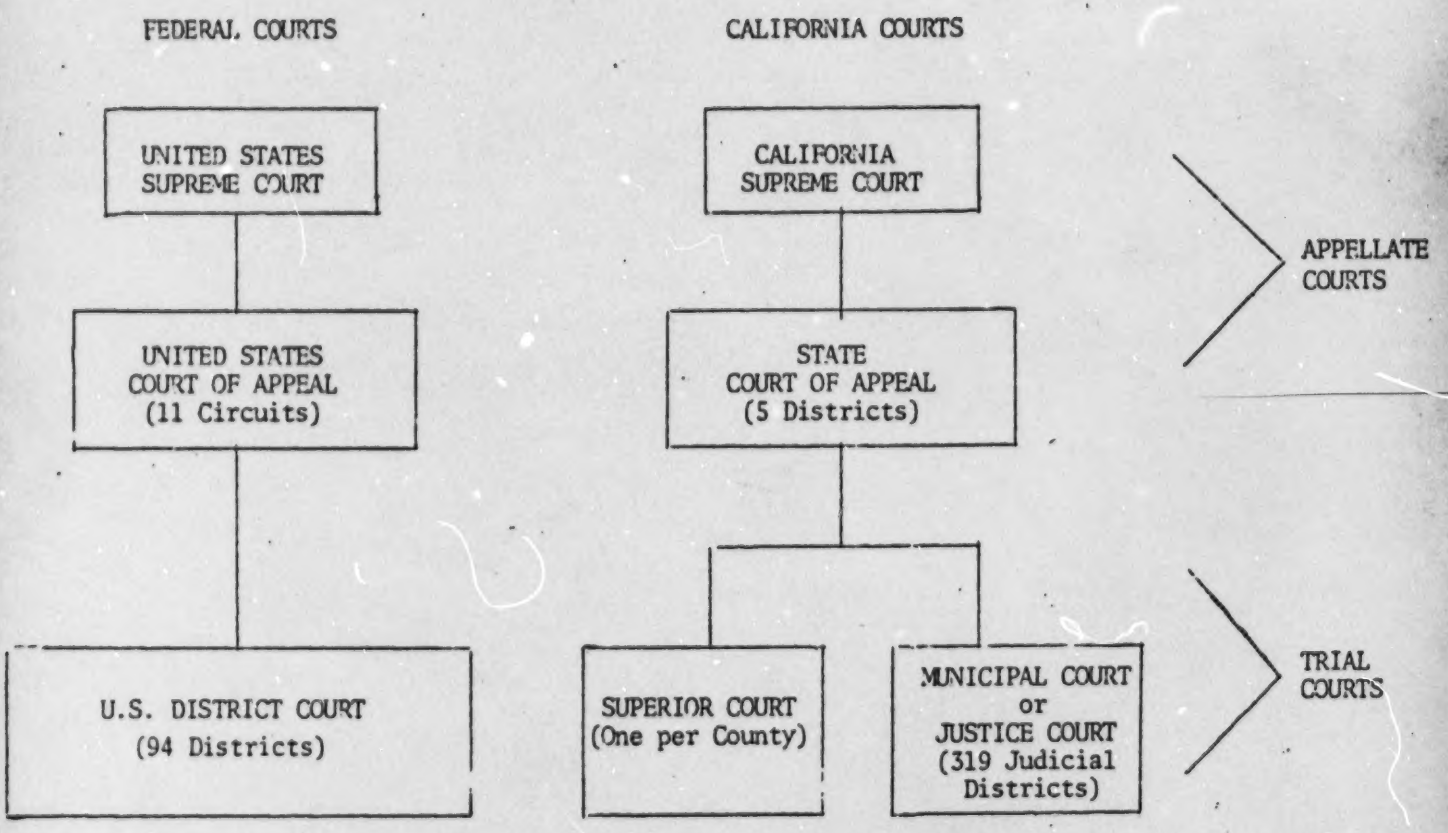
* Common law - Law that has its origins in England and grows from ever-changing custom and tradition. Judge-made law (as opposed to legislature-made law).

** Equity - A court's power to "do justice" where specific laws do not cover the situation.

more important cases--the felonies and civil cases involving over $5,000. But certain types of cases, such as divorce and probate, are brought only in superior court regardless of the amount in controversy. In the smaller judicial districts with a justice court instead of a municipal court, there is a similar division of the cases.

The federal court system has a similar structure. While there are a number of courts that handle only specialized matters, such as the customs court and tax court, most cases start in the federal district courts. Congress has strictly limited the types of cases that fall within the jurisdiction of these courts. One type is the diversity case where each party resides in a different state and the amount in controversy is over $10,000. The other type is a case involving a federal question, that is, one applying the federal constitution, statutes, or treaties.


FEDERAL COURTS
CALIFORNIA COURTS
UNITED STATES SUPREME COURT
CALIFORNIA SUPREME COURT
APPELLATE COURTS
UNITED STATES COURT OF APPEAL (11 Circuits)
STATE COURT OF APPEAL (5 Districts)
U.S. DISTRICT COURT (94 Districts)
SUPERIOR COURT (One per County)
MUNICIPAL COURT or JUSTICE COURT (319 Judicial Districts)
TRIAL COURTS

A SIMPLIFIED VIEW OF THE FEDERAL AND CALIFORNIA COURT STRUCTURES

"GATEWAY"

Deportation

A Lawyer Lesson Plan
Prepared by Doris Katagiri, 1982

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GATEWAY
(Deportation)

LAWYER'S LESSON PLAN

Specific Topic: Deportation

Objective:

A. To expose students to the quota system, a quantitative restriction on immigration to the United States

B. To expose students to the secondary rule of treaties entered into by the United States with other countries

CASE

Relying on the advice of a former history professor that the Treaty of Guadalupe Hidalgo of 1848 between the United States and Mexico still guaranteed free access to all Mexican nationals to the United States, Rita Gonzalez, a Mexican national, entered the United States by crossing an unguarded portion of the border between the two countries. She had documents from neither the Mexican nor United States governments. Neither did she pass inspection by officials of the Immigration and Naturalization Service at the border or at any other point within the United States. Four years passed during which time Ms. Gonzalez was employed at a junior college in Los Angeles teaching Spanish and participating in many school activities. She had lived an exemplary life and was well respected by all in the community.

During this period the Immigration Service discovered that Ms. Gonzalez did not have a valid visa and had not passed inspection at the border. They have filed an order to show cause to have her deported. Upon receiving notice of the charges against her, Ms. Gonzalez asked her attorney whether she can in fact be deported under the U.S. Immigration laws, particularly in view of the treaty between the two countries. If she is deportable, Ms. Gonzalez wishes to know whether there are any possibilities of attacking the federal law on constitutional grounds.

QUESTIONS AND DISCUSSION

A. What are the major issues raised by the case?

1. Does an alien have an unconditional right of entry into the United States where a treaty between the U.S. and the alien's country appears to guarantee it?

2. What is the nature of the deportation process? Is it criminal or civil in nature or something in between?

B. Who has an interest in the issues? Which of these interests are or should be protected by law? Why?

The alien, the federal government, the governments of the several states, and the individual citizens of the United States have interests in the number and types of persons who are to be admitted to this country.

C. What are the arguments supporting the interests of the parties involved?

1. The federal government, it can be argued, has a legitimate interest in regulating the overall numbers of persons coming to this country for both immigration and non-immigration purposes.

a. As a sovereign entity, the United States has the right to allow within its borders only those individuals that it deems desirable. As a corollary to that rule, it also has the right to expel for any reasons whatsoever, any undesirable foreigner from within its territory so long as that person is not a citizen of the United States. This set of rights is absolute and unqualified. It is necessary for the protection of the state, and so is regarded with the utmost deference. The foreigner's claim to remain in the country is "held by a precarious tenure." Harisiades v. Shaughnessy, 342 U.S. 580, 587 (1952).

b. The question of how many foreigners are to be admitted for both permanent (immigrant) and temporary (non-immigrant) purposes is one to be left to the legislative and executive branches of government, because it is a political decision to be made by the representatives of the people rather than by judges who are not responsible to any electorate but are appointed. Just as the power to declare war and make treaties, the deportation power deals with foreign relations, which is a political matter solely for the exercise of non-judicial powers. Because of this the judiciary has no power to make any decision in the matter of

foreign relations where there exists a statute on the subject. It is a question of separation of powers. Thus, since there is a law which has been duly passed and signed into existence, and since the plaintiff in the case violated that provision, the court cannot remedy her situation. It must apply the law. Any change in the law must, therefore, come through the legislature rather than through the courts.

c. The Fifth and Fourteenth Amendments to the Constitution guarantee that no person shall be deprived of life, liberty or property without due process of law. It can be argued that when an alien is deported, it is a deprivation of liberty and possible property as well. Nevertheless, it also can be argued that if the federal government follows all procedural standards set forth by the courts, such as notice, hearing, Miranda warnings, etc., then the foreigner has been given all that is entitled to him/her. In other words, the Constitution and Bill of Rights do no more than guarantee to the foreigner procedural due process in deportation cases, which will have been met if the government follows all that is required of them in the deportation process.

2. The interests of the individual citizen can be construed either to promote unrestricted immigration or to limit it. On the one hand, it can be argued that a citizen occupies a pre-eminent position and has superior rights to non-citizens. On the other hand, the citizen has an interest in associating with citizens and non-citizens irrespective of their national, ethnic, or occupational background. The latter view would hold, therefore, that the interest of the individual is to promote an unrestricted policy of immigration without governmental interference.

3. If you were Ms. Gonzales, what argument would you make to support your right to enter the United States and your right not to be deported?

a. The argument that an alien has an absolute right of entry into the United States.

As a general rule of comity* among nations, free access to all countries should be permitted. Parallel with the argument in favor of free international trade, no artificial barriers to prevent free movement of persons should be erected by any nation. According to this position, any statutory scheme having the effect of violating this rule of comity should be prohibited; consequently, the statutory scheme applied against Ms. Gonzalez should not be allowed to stand.

Second, strict construction of Articles VIII and IX of the Treaty of Guadalupe Hidalgo proclaimed between Mexico and the United States in 1848 requires free movement of Mexican nationals to and from the United States. Following from this requirement, visas, inspection requirements and the quota system are invalid under the terms and spirit of the treaty.

b. The argument that deportation is an impermissible action by the federal government because it contravenes constitutional requirements.

(1) Due Process.

The due process clause of the Fifth Amendment proscribes the federal government from depriving any person of "liberty . . . without due process of law". Once a person enters the United States, it can be argued that a vested right to remain within the country attaches to the person; consequently, the deportation process contravenes the Fifth Amendment because it deprives the alien of the right to remain in the country.

(2) By viewing the individual citizen's interest, it can be argued that a citizen's right to free association is infringed upon by 1) the quantitative

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* "Comity" - A general rule of courtesy among nations which is adhered to out of respect rather than as a rule of international law.

restriction imposed by the federal government which makes it impossible for citizens to meet aliens in unrestricted numbers who are subject to a quota system; 2) the act of deporting Ms. Gonzalez which similarly makes it impossible for citizens to associate with persons of her national background.

(3) Eighth Amendment--Cruel and Unusual Punishment.

Because the effect of deportation is equivalent to banishment with the concomitants of loss of livelihood, loss of the opportunity to associate with friends and family members, and loss of residence, it is a punishment equal to or more severe than imprisonment. Such a harsh punishment contravenes the prohibition against penal sanctions that are cruel and unusual.

(4) Fifth Amendment--Equal Protection Clause.

The alien can argue that the application of the statute establishing the quota system is violative of the Equal Protection Clause because it sets up the classification of race and national origin as bases for determining who shall be allowed to enter the United States. Such classifications are "suspect" and will not be upheld in the absence of a clear governmental interest in doing so.

c. The argument that the procedural safeguards attached to deportation are not met because they do not include the constitutional requirements of a right to jury trial, right to counsel, and all rights incident to a criminal proceeding.

The crux of this argument is that the deportation proceeding is criminal in nature because the sanctions meted out are equivalent to a penalty. It follows, therefore, that because it is a criminal proceeding, all constitutional requirements associated with a criminal proceeding must attach.

d. The argument that the First Amendment guarantees the individual citizen the right to associate with whomever he/she pleases. Carried to the logical extreme, this view would not permit any restriction on immigration because it would diminish the individual's right to associate with others.

e. The argument that the interests of the federal government in regulating immigration is a basic attribute of national sovereignty. That is, although there is no specific constitutional mandate of power for Congress to legislate in this area (except perhaps as a necessary and appropriate exercise of the war power, the power to regulate foreign commerce, and to establish a uniform rule of naturalization) in order to ensure the sovereign integrity of the country it is necessary and appropriate for Congress to act in this area.

f. The argument that the Tenth Amendment reserves power to the individual states to determine the type of persons who are to be allowed to reside within their boundaries.

D. Ask the students how they would feel if the situation involved them, or someone they know.

E. What effect, if any, would and/or should the following facts have in resolving the issue:

1. Prejudice (against Ms. Gonzalez for having entered the United States without legal papers and having spent four years in the country, making no attempt to discover what her legal status was).

2. Sympathy (toward Ms. Gonzalez who relied on authoritative-appearing advice by a university professor who knew more about history than the current status of the immigration law).

3. The relative needs of the parties.

4. Society's needs.

F. Ask the students how they would resolve the dispute and why.

RESOLUTION OF THE ISSUE

A. The statutory proscription:

Sections 241(a)(1), 241(a)(2), 241(a)(5) of the Immigration and Nationality Act of 1952 directs the deportation of any alien who "at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry; entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this Act or in violation of any other law of the United States. . . ."

B. The decision of the Supreme Court on the constitutionality of deportation and the relative interests of the parties:

As early as 1889, the United States Supreme Court held that the federal government through the enactment of laws by Congress had plenary power that was inherent in national sovereignty to regulate the number and types of persons coming to the country for the purpose of immigration or temporary visits. Later cases confirmed this early decision and made it clear that the court would not disturb any numerical, racial, occupational, or other qualitative restrictions. It follows from these decisions that the interests of the federal government are to be deemed paramount and all other interests are to be regulated to a subordinate position. It similarly follows that any international rule of comity will have no force or effect and can only be viewed as an impotent principle.

Another consequence of the paramount interest of the federal government is the weakened position of constitutional requirements. To date the court has rejected arguments raising the issues of substantive due process, and cruel and unusual punishment. The primary rationale used by the court is that the alien is not to be given the same status as citizens in all matters, particularly when it relates to immigration laws because he is not in legal parity with citizens. The students should be made aware of the circularity of this rationale.

To date the courts have not resolved the conflict of interests of the alien and the citizen against the federal government in the right of free association guaranteed by the First Amendment, nor have they

decided the issue of Equal Protection as it relates to the application of the statute in a sexually discriminatory manner. Additionally, the courts have not entirely settled the rights of the states to regulate the types of persons who reside within their borders. They have decided, however, that where there is a conflict between the right of a state to regulate and the right of a person to travel freely from one state to another, the individual's freedom will receive greater protection. The only justification for the state to erect barriers will be limited to reasons for the public health and safety. Given the court's current position it is unlikely that any attempt by a state to penalize persons who have not been formally convicted of a crime will be upheld.

Although the Supreme Court has stated as a general principle that immigration statutes are to be construed "with a view to preserve treaty rights unless clearly annulled" in the Nagle case, the working rule has more often been that a statutory regulation enacted after a treaty will supercede the conflicting provision of the treaty. Although such a working principle appears to play havoc with any international rule of comity, it is consistent with the early case decisions of the Court which gave the legislative branch of the federal government a paramount role in immigration matters.

REFERENCES

Immigration and Nationality Act of 1952, Sections 212(a)(20), 241(a)(1), (2), (5)

Treaty of Guadalupe Hidalgo, Arts. VIII, IX, 9 Stat. 922, 10 Stat. 1031, 1 Mallory 1107 (proclaimed July 4, 1848)

Chinese Exclusion Cases, 130 U.S. 581, 9 S.Ct. 623 (1889), paramount role of legislature in immigration matters

Harisades v. Shaughnessy, 342 U.S. 580, 72 S.Ct. 512 (1952), due process

Burr v. INS, 350 F.2d 87 (9th Cir. 1965), cruel and unusual punishment

Texas State AFL-CIO v. Kennedy, 330 F.2d 217 (D.C. Cir. 1974), free association

Vlissidis v. Anadell, 262 F.2d 398 (7th Cir. 1959), validity of the quota system

Cheung Sum She v. Nagle, 268 U.S. 336, 45 S.Ct. 539 (1925), treaties conflicting with immigration laws

Moser v. U.S., 341 U.S. 41, 71 S.Ct. 553 (1951), statute supercedes treaty provisions

Note:

The provisions of the Eilberg bill (H.R. 14535) enacted into law in October, 1976 have not been specifically discussed. In brief, they further restrict immigration from the Western Hemisphere and subject each country, including Mexico, to an annual quote of 20,000 immigrant visas. Prior to its enactment there was an overall limitation of 120,000 immigrant visas for the Western Hemisphere with no restrictions on a countrywide basis. Given current case law discussed above, there is little reason to believe that an attack on the further restrictive quota provisions of this legislation will be successful.

Ameriorative provisions of the immigration law have not been included. See Section 244 of the Immigration and Nationality Act which would be relevant to Ms. Gonzalez' situation.

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